

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



DEBORAH-LEE ADAMS, individually
and on behalf of all others similarly
situated,

Plaintiffs,

21-CV-753 (JLS) (HKS)

v.

TOPS MARKETS, LLC,

Defendant.

DECISION AND ORDER

Plaintiff Deborah-Lee Adams filed a Complaint on June 19, 2021, setting forth various claims against Defendant under federal and Vermont law. Dkt. 1. Her claims are based on allegations that Defendant made false, deceptive, and misleading statements regarding its generic coffee product. *Id.* On August 19, 2021, Plaintiff filed an Amended Complaint. Dkt. 6.

On October 1, 2021, Defendant moved to dismiss the Amended Complaint. Dkt. 8. This Court then referred the case to United States Magistrate Judge H. Kenneth Schroeder, Jr. for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 11. On October 8, 2021, Plaintiff responded in opposition to Defendant's (Dkt. 8) motion to dismiss. Dkt. 12. She filed a Second Amended Complaint on October 22, 2021. Dkt. 17. On March 14, 2022, Defendant moved for "an Order striking the Second Amended Complaint in its entirety pursuant to Fed. R. Civ. P. 12(f), or, alternatively, dismissing it pursuant to Fed. R. Civ. P. 12(b)(6)." Dkt. 22.

On April 28, 2022, Plaintiff filed a memorandum in opposition to Defendant's motion, Dkt. 24, and Defendant replied. Dkt. 26. On October 14, 2022, Defendant filed a "notice of supplemental authority" in further support of its motion. Dkt. 28.

On July 7, 2023, Judge Schroeder issued a Report and Recommendation ("R&R") granting Defendant's motion to strike the Second Amended Complaint and recommending that this Court grant Defendant's (Dkt. 8) motion to dismiss the (Dkt. 6) Amended Complaint. Dkt. 29. The court recommended that "Plaintiff's request for leave to amend its complaint to assert a cause of action under New York GBL §§ 349 and 350 be granted." *Id.* at 27. Neither party filed objections, and the time to do so has expired.

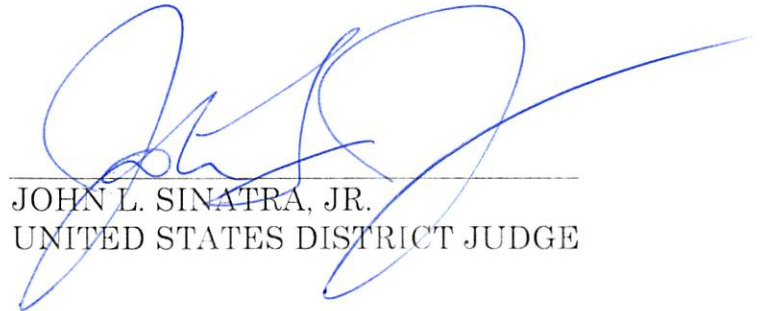
A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. See 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the R&R and the relevant record. Based on that review, the Court accepts Judge Schroeder's recommendation. As such, the Court GRANTS Defendant's motion to strike the Second Amended Complaint and further GRANTS Defendant's motion to dismiss the Amended Complaint. In addition, Plaintiff has leave to amend the Complaint to assert claims under N.Y.

Gen. Bus. L §§ 349 and 350. The case is referred back to Judge Schroeder consistent with the October 4, 2021 referral order. *See* Dkt. 11.

SO ORDERED.

Dated: July 26, 2023
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE